IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 4630 OF 2004

IN

CRIMINAL APPEAL NO.1298 OF 2004

Chalan @ Zelya Gojya Bhosale .. Applicant

versus

The State of Maharashtra .. Respondents

...

Mr.Rajesh More for the applicant.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 23rd November 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned APP appearing on behalf of the State.

2. The applicant is convicted by the trial Court for having committed an offence u/s.376 of the IPC and is sentenced to suffer RI for three years. The

prosecution case is that the prosecutrix was 10 years old and the accused who was 25 years of age at that time, forcibly committed rape on the minor girl. The prosecution has not produced the birth certificate or School Leaving Certificate of the prosecutrix. The doctor has given an opinion on the basis of the ossification test that the age of the girl was between 14 to 16 years with a margin of error of six months on either side. It is submitted that in the cross examination the prosecutrix has admitted that she was having a love affair with the accused. It is further submitted that the accused has already undergone sentence of 1 1/2 years. It is therefore submitted that the applicant is entitled to be released on bail. In my view, this is not a fit case where the applicant should be released on bail. The evidence of the Doctor shows that there were injuries on the private parts of the minor girl and other injuries on the person of the prosecutrix.

3. Application for bail is therefore, rejected.

4. Liberty is given to the applicant however to apply for bail if the appeal is not heard within a period of six months from today.

V.M. KANADE, J